

MAINE STATE LEGISLATURE

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**STATE OF MAINE
118TH LEGISLATURE**

**FIRST REGULAR SESSION
AND
FIRST SPECIAL SESSION**

**BILL SUMMARIES
JOINT STANDING COMMITTEE
ON
LABOR**

JULY 1997

Staff:

*Lisa C. Copenhaver, Legislative Analyst
Thomas H. Eyman, Legislative Analyst
David C. Elliott, Principal Analyst*

*Office of Policy and Legal Analysis
Room 101/107/135, 13 State House Station
Augusta, ME 04333
(207)287-1670*

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Maine State Legislature

OFFICE OF POLICY AND LEGAL ANALYSIS

13 State House Station, Augusta, Maine 04333-0013
Telephone: (207) 287-1670
Fax: (207) 287-1275

**ONE HUNDRED EIGHTEENTH LEGISLATURE
FIRST REGULAR AND FIRST SPECIAL SESSIONS**

**Summary Of Legislation Before The Joint Standing Committees
August 1997**

We are pleased to provide this summary of bills that were considered by the 15 Joint Standing Committees of the Maine Legislature staffed by this office. The document is a compilation of bill summaries which describe each bill, committee amendments and other relevant amendments, as well as the final action taken on the bill. Also included are statistical summaries of bill activity this Session for the Legislature and each of its joint standing committees.

The document is organized for convenient reference to information on bills handled by the joint standing committees. It is organized alphabetically by committees and within committees by bill (LD) number. The committee report(s), prime sponsor for each bill and the lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are listed by paper number. Two indices, a subject index and a numerical index by LD number are provided for easy reference to bills. They are located at the back of the document. A separate publication, History and Final Disposition of Legislative Documents, may also be helpful in providing information on the disposition of bills. These bill summaries also are available at the Law and Legislative Reference Library and on the Internet (www.state.me.us/legis/opla).

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

- CARRIED OVER*.....*Bill carried over to Second Regular Session*
- CON RES XXX*.....*Chapter # of Constitutional Resolution passed by both Houses*
- CONF CMTE UNABLE TO AGREE*.....*Committee of Conference unable to agree; bill died*
- DIED BETWEEN BODIES*.....*House & Senate disagree; bill died*
- DIED IN CONCURRENCE*.....*One body accepts ONTP report; the other indefinitely postpones the bill*
- DIED ON ADJOURNMENT*.....*Action incomplete when session ended; bill died*
- EMERGENCY*.....*Enacted law takes effect sooner than 90 days*
- FAILED EMERGENCY ENACTMENT/FINAL PASSAGE*.....*Emergency bill failed to get 2/3 vote*
- FAILED ENACTMENT/FINAL PASSAGE*.....*Bill failed to get majority vote*
- FAILED MANDATE ENACTMENT*.....*Bill imposing local mandate failed to get 2/3 vote*
- INDEF PP*.....*Bill Indefinitely Postponed*
- ONTP*.....*Ought Not To Pass report accepted*
- OTP ND*.....*Committee report Ought To Pass In New Draft*
- OTP ND/NT*.....*Committee report Ought To Pass In New Draft/New Title*
- P&S XXX*.....*Chapter # of enacted Private & Special Law*
- PUBLIC XXX*.....*Chapter # of enacted Public Law*
- RESOLVE XXX*.....*Chapter # of finally passed Resolve*
- UNSIGNED*.....*Bill held by Governor*
- VETO SUSTAINED*.....*Legislature failed to override Governor's Veto*

Please note the effective date for all non-emergency legislation enacted in the First Regular Session (unless otherwise specified in a particular law) is June 26, 1997 and September 19, 1997 for the First Special Session.

David E. Boulter, Director

Offices Located in the State House, Rooms 101/107/135

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NUTTING	OTP-AM MAJ	H-719 THOMPSON
BUMPS	OTP-AM MAJ	S-302

LD 1523 proposed to make a number of changes to the laws governing workers' compensation. The bill proposed to rename the existing "troubleshooter" program as the "employee advocate" program and direct employee advocates to assist employees through mediation and hearings. The bill would raise the cap on assessments that fund the Workers' Compensation Board and included an allocation to fund 13 additional employee advocates. The bill also proposed that, with respect to medical evidence, hearings must proceed on the basis of sworn statements alone and health care practitioners would not be subject to cross-examination at hearings.

Committee Amendment "A" (S-301) was the majority report of the committee and was not adopted. The amendment proposed to create an advocate program to be available to both employees and employers. The amendment included a mission statement for the Workers' Compensation Board and proposed that the board be required to establish an audit, enforcement and monitoring program, publish quarterly compliance reports and include certain specified data in its annual report. The amendment also proposed that, if the board orders the suspension of benefits following a previous order allowing benefits, the employer must discontinue benefits while the employee's appeal to the Law Court is in progress. The amendment proposed changes to the settlement provisions to encourage structured settlements and proposed changes to the penalty provision to allow the superintendent of insurance to investigate and penalize for improper claims-handling practices.

Under this amendment, the advocate program proposed is available to assist and advocate on behalf of the employee after troubleshooting or the employer after mediation. The qualifications for the advocates and their duties are specified in the amendment. The Workers' Compensation Board would be required to hire a staff attorney to assist the advocates in preparing cases for formal hearing.

With respect to legal representation, this amendment proposed that at the conclusion of mediation the employer would be required to inform the board and the employee whether the employer will be represented by legal counsel at subsequent proceedings. If the employer elected to be represented, the employee would be entitled to have the employee's attorney's fees paid for by the employer if the employee hires an attorney and prevails. If the employee prevails and is entitled to have the attorney's fees paid for by the employer, only those services rendered after the date of mediation would be allowable.

The amendment proposed that the board be required to implement its audit and enforcement responsibilities by July 1, 1998 by establishing an audit, enforcement and monitoring program. The board would have to include in its annual report information on the workers' compensation system, with specific data regarding compliance of insurers, self-insurers and third-party administrators with the current law. The annual report would also have to include an analysis of the board's performance in the management of case administration, payment monitoring, investigations, lump-sum settlements, audits and penalties.

The amendment also proposed to raise the board's existing assessment cap from \$6,000,000 to \$6,600,000 for fiscal years 1997-98 and beyond to permit the hiring of advocates and auditors.

Committee Amendment "B" (S-302) is the minority report of the committee and was adopted. The amendment proposed to establish an advocate program to assist employees with their workers' compensation claims through the

formal hearing stage. The amendment included a mission statement for the Workers' Compensation Board and proposed that the board be required to establish an audit, enforcement and monitoring program, publish quarterly compliance reports and include certain specified data in its annual report.

The amendment proposed to establish an advocate program to assist employees who have participated in the troubleshooter program and have not resolved their dispute. The duties of the advocates would include assisting employees regarding their claims, helping employees obtain appropriate rehabilitation services or return to work opportunities and advocating on behalf of the employees during mediation or the formal hearings. The Workers' Compensation Board would be required to hire a staff attorney to advise the advocates in the preparation of their cases at the formal hearing stage.

The amendment also proposed that the board be required to implement its audit and enforcement responsibilities by July 1, 1998 by establishing an audit, enforcement and monitoring program. The board would have to include in its annual report information on the workers' compensation system, with specific data regarding compliance of insurers, self-insurers and third-party administrators with the current law. The annual report would also have to include an analysis of the board's performance in the management of case administration, payment monitoring, investigations, lump-sum settlements, audits and penalties.

The amendment proposed to raise the board's existing assessment cap from \$6,000,000 to \$6,600,000 for fiscal years 1997-98 and beyond to permit the hiring of advocates and auditors.

House Amendment "E" to Committee Amendment "B" (H-719) proposed to require the executive director of the board, rather than the Workers' Compensation Board itself, to establish the audit, enforcement and monitoring program and proposed to require the schedule of audits to be developed by the deputy director of benefits administration.

House Amendment "A" to Committee Amendment "B" (H-641) proposed that, if the Workers' Compensation Board orders the suspension of benefits following a previous order allowing benefits, the employer must discontinue benefits while the employee's appeal to the Law Court is in progress. This amendment was not adopted.

House Amendment "B" to Committee Amendment "B" (H-715) proposed to change the provisions regarding settlements to encourage structured settlements when the settlement amount is large. This amendment also proposed to require that at the conclusion of mediation the employer must inform the board and the employee whether the employer will be represented by legal counsel at any subsequent proceeding or meeting with the employee. If the employer elects to be represented, the employee would be entitled to have the employee's attorney's fees paid for by the employer if the employee hires an attorney and prevails. If the employee prevails and is entitled to have the attorney's fees paid for by the employer, only those services rendered after the date of mediation would be allowable. This amendment also proposed a repeal date of September 1, 1999 on the entitling certain employees to have their attorney's fees paid by the employer. The amendment also proposed that the Labor Committee be required to recommend whether that section of law should be continued. This amendment was not adopted.

House Amendment "C" to Committee Amendment "B" (H-716) proposed to replace the advocate program proposed in Committee Amendment "B" with the advocate program proposed in Committee Amendment "A" with certain modifications. As in Committee Amendment "A," the advocates would be able to represent both employers and employees, however, only those advocates who are attorneys could represent anyone in any proceeding beyond the mediation stage. The amendment proposed that at least five new advocates be hired, all of whom must be attorneys. The amendment also proposed to increase the Workers' Compensation Board's assessment cap to account for the new attorney positions. This amendment was not adopted.

House Amendment "D" to Committee Amendment "B" (H-718) This amendment proposed to change the penalty provisions of the worker's compensation law to allow the Superintendent of Insurance to investigate and penalize improper claims-handling practices. This amendment was not adopted.

Enacted law summary

Public Law 1997, chapter 486 establishes an advocate program to assist employees with their workers' compensation claims through the formal hearing stage. It also includes a mission statement for the Workers' Compensation Board and requires the board to publish quarterly compliance reports and include certain specified data in its annual report. It requires the Executive Director to establish an audit, enforcement and monitoring program,

The advocate program established by this chapter is designed to assist employees who have participated in the troubleshooter program and have not resolved their dispute. The duties of the advocates include assisting employees regarding their claims, helping employees obtain appropriate rehabilitation services or return to work opportunities and advocating on behalf of the employees during mediation or the formal hearings. The Workers' Compensation Board is required to hire a staff attorney to advise the advocates in the preparation of their cases at the formal hearing stage.

Chapter 486 requires the Executive Director of the Workers' Compensation Board to establish an audit, enforcement and monitoring program by July 1, 1998 and requires the schedule of audits to be developed by the deputy director of benefits administration. The board is required to include in its annual report information on the workers' compensation system, with specific data regarding compliance of insurers, self-insurers and third-party administrators with the current law. The annual report must also include an analysis of the board's performance in the management of case administration, payment monitoring, investigations, lump-sum settlements, audits and penalties.

Chapter 486 also raises the board's existing assessment cap from \$6,000,000 to \$6,600,000 for fiscal years 1997-98 and beyond to permit the hiring of advocates and auditors.

LD 1567

**An Act to Reinstate Limited Rehabilitation Benefits under the
Maine Workers' Compensation Act of 1992 for Those with Long-
term Disabilities**

CARRIED OVER

Sponsor(s)
MILLS

Committee Report

Amendments Adopted

LD 1567 proposes to reinstate limited rehabilitation benefits under the Maine Workers' Compensation Act of 1992 for people with long-term disabilities. The bill allows a rehabilitation evaluation to be ordered without a full hearing if it appears that the injury is compensable and that the period of disability will exceed 90 days. The bill proposes that the board may also order the implementation of the rehabilitation plan even if the underlying claim is not finally resolved. The proposal requires the employer to reimburse the Employment Rehabilitation Fund if the employer is finally adjudicated as being responsible for the disability. This bill was carried over to the Second Regular Session.